IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.560 OF 1993

1. Smt.Swarna B.Kapoor

2. Smt.Pravinlata M.Kapoor
Petitioner Nos.1 and 2 residing
at Green Building, 4th Floor,
Off St.Franci's Road,
Bandra, Bombay - 400 050.

3. Smt.Prabha Whig

4. Shri.Anil Whig

5. Shri.Sunil Whig

6. Shri.Manil Whig
Petitioner Nos.3 to 6
having address at
Flat No.3, 3rd Floor,
Mitra Kunj, 16, Peddar Road,
Bombay - 400 026. **..Petitioners**

Versus

1. The Appropriate Authority
Constituted of the Members :
i) S.K.Laul,
Chief Engineer.
ii) S.C.Tiwari
Commissioner of Income - tax.
iii) C.M.Betgeri
Commissioner of Income - tax
appointed by Central Government
u/s.269UB of the Income Tax Act,
1961 having its office at 3rd Floor,
Mittal Court, 'A' Wing,
Nariman Point, Bombay - 400021.

2. Union of India. **..Respondents**

Mr.K.B.Bhujale for the Petitioners.
Mr.R.Ashokan for the Respondents.

CORAM :- DR.S.RADHAKRISHNAN &
V.C.DAGA, JJ.

DATE : 5TH JUNE, 2007

JUDGMENT (PER : DR.S.RADHAKRISHNAN,J.)

1. By this Petition, the Petitioners are challenging the order dated 18th February,1993, passed by the Commissioner of Income Tax under Section 269UD(1) of the Income Tax,1961 (hereinafter referred to as "the Act"). The Petitioners have also prayed for a direction to the Respondent No.1 for grant of 'No Objection Certificate' in respect of the transaction in question. The Petitioners have further prayed that the Central Government be directed to make good the loss caused to the Petitioners and to pay the amount with interest. It is further prayed by the Petitioners for an injunction restraining the Respondents from proceeding further by way of taking possession of the property, in pursuance of the impugned order.

2. The brief facts of the case are that the Petitioner Nos.1 and 2 (hereinafter referred to as the Vendors) were the joint owners of the immovable property being Flat No.3, 3rd Floor, Mitra Kunja Cooperative Housing Society, Peddar Road, Bombay-400026 (hereinafter referred to as the said property).

3. It is the case of the Petitioners-Vendors that they were interested in selling the said property and the Purchasers (being Petitioner Nos.3 to 6) were

interested in purchasing the said property. Accordingly, on 1st July,1986 the Valuation Report of the said property was obtained from the Government approved Valuer, who had valued said property at Rs.22,65,600/-. It appears that on 15th July,1986, the purchasers had paid Rs.51,000/- as earnest money by Demand Draft dated 13th July,1986 for which the Vendors had issued a receipt. On 16th September,1986, the Vendors and Purchasers had entered into an oral agreement for sale of the said property for Rs.22,50,000/-, thereafter the transfer form came to be filed by the Vendors and accordingly an application was made to the Society for transfer of shares. As the Petitioner No.6-purchaser was a Citizen of Canada, on 22nd August,1986 he had requested his banker to obtain necessary permission from Reserve Bank of India, accordingly on 28th September,1986 the banker of Petitioner No.6 had forwarded an application for permission to the Reserve Bank of India.

4. It is contended by the Petitioners that the District Valuation Officer had informed the Petitioner No.6 that the property will be inspected on 6th November,1986 accordingly, the District Valuation Officer had inspected the property and had prepared a Valuation Report and the same came to be forwarded to the Reserve Bank of India. As per the Valuation Report, the property was valued at Rs.25 lakhs which also included Rs.15,000/- for car parking space. As

per the said valuation report, the rate for built up area was fixed at Rs.1250/- per sq.ft. Accordingly, it appears that the Reserve Bank of India had granted permission for a transaction on 29th November,1986. Thereafter on 30th September,1986 an agreement was put in writing, and as the transaction was for the period prior to 1st October,1986, it required No Objection Certificate from Competent Authority under Chapter XXA of the Income Tax Act. It appears that on 3rd July,1987 the Competent Authority had issued a show cause notice, to which the Petitioners had filed their written submissions on 16th October,1987. Thereafter, the Competent Authority had issued a fresh notice of hearing on 10th March,1988, to which the Petitioners had filed further written submissions. On 23rd October,1989, the Competent Authority had accordingly granted a No Objection Certificate. It is the case of the Petitioners that on 16th October,1986, due to uncertainty as to the legal position and by way of abundant caution and under protest, the Vendors had filed Form 37-I along with the agreement dated 30th September,1986. Thereafter, on 12th December,1986, the Commissioner of Income Tax had passed an order under Section 269UD(1) of the Income Tax Act directing thereby the purchase of the property. Thereafter, Writ Petition No.3536 of 1986 came to be filed by the Petitioners, wherein this Court had passed an order dated 16th December,1992 and the aforesaid order of the Commissioner of Income Tax, 12th December,1986 was

quashed and set aside. Thereafter, it appears that on 6th January,1993, the Respondent No.1 being the Commissioner of Income Tax had issued a show cause notice to which the reasons for passing the order dated 12th December,1986 were also enclosed. It is the case of the Petitioners that the Valuation Report dated 26th November,1986 & 10th December, 1986 and note of I.A.C. dated 26th November,1986 & 10th December,1986 and the material/information regarding the four transactions relied on by the Appropriate Authority were not furnished, though demanded by the Petitioners. The Petitioners had made their oral submissions before the Appropriate Authority on 21st January,1993 and on 12th February,1993 filed their supplementary submissions also. On 18th February,1993, the Petitioners had filed copies of photographs. Thereafter on 25th February,1993, the Petitioners received an order of the Commissioner of Income Tax under Section 269UD(1) of the Income Tax Act dated 18th February,1993, whereby compulsory purchase of the said property was directed. Aggrieved by the aforesaid order dated 18th February,1993, the Petitioners have filed the present Petition.

5. The learned Counsel Mr.Bhujale appearing on behalf of the Petitioners contended that the impugned order passed by the Commissioner of Income Tax was on the basis of rates wrongly determined and therefore the said order is bad in law. According to him, the

rate of Rs.1120/- per sq.ft. of the said property was wrongly determined and the correct rate should have been Rs.1191.74 per sq.ft. The learned Counsel for the Petitioners also submitted that the Appropriate Authority had erroneously allocated Rs.25,000/- for parking space. The learned Counsel has further submitted that in the instant case, there was no understatement of consideration. In support of this submission, the learned Counsel for the Petitioners has pointed out that the negotiations for the deal had commenced in May/June,1986 and the report from the Government approved Valuer was obtained for determination of fair price, which was determined at Rs.1200/- per sq.ft. As per the said rate, a total price would come to Rs.22,65,600/-, which was rounded off to Rs.22,50,000/-. Accordingly, the consideration was fixed on the basis of fair price of Rs.1200/- per sq.ft., as determined by the Government approved Valuer. The learned Counsel for the Petitioners has further pointed out that a similar sale transaction had taken place in the same building on 1st February,1985 wherein the rate was fixed at Rs.550/- per sq.ft. Comparing the said transaction with the transaction in subject, the learned Counsel for the Petitioners had pointed out that the rate of Rs.1200/- per sq.ft. in the present transaction was fair and reasonable. The learned Counsel for the Petitioners further submitted that the consideration in the instant case as per the valuation of the District

Valuation Officer was fair and reasonable and there was no understatement of consideration. The learned Counsel for the Petitioners also submitted that the Reserve Bank of India had granted permission for the said transaction, and the transaction being entered prior to 1st October,1986, the Chapter XXA of the Income Tax Act, 1961 is applicable to this case. The learned Counsel for the Petitioners further pointed out that the Competent Authority had issued a show cause notices dated 3rd July,1987 & 10th March,1988 proposing to acquire the said property on the ground of understatement of consideration. In response to the aforesaid show cause notices, the parties had appeared and explained before the Appropriate Authority as to how there was no understatement of consideration. It is the case of the Petitioners that the Competent Authority, on being satisfied with the explanation that there was no understatement of consideration, by its order dated 23rd October,1989 held that it was not a fit case for acquisition under Chapter XXA of the Income Tax Act.

6. The learned Counsel for the Petitioners, Mr.Bhujale has vehemently submitted that the Appropriate Authority had not proved understatement of consideration or any attempt to evade tax. It is the case of the Petitioners that the Appropriate Authority had not even brought any evidence to show understatement of consideration or attempt to evade

tax so as to assume jurisdiction for passing a valid order of purchase. The learned Counsel for the Petitioners has therefore strongly contended that such a presumption of understatement of consideration and attempt to evade tax, cannot be held to be valid and accordingly, cannot be a valid basis for purchase of property under Chapter XXC of the Act.

7. The learned Counsel for the Petitioners submitted that the Competent Authority had processed the transaction under Chapter XXA of the Act, thereby holding that it was not a fit case for acquisition. According to him, the Appropriate Authority had no jurisdiction and was not justified in purchasing the property under Chapter XXC of the Act.

8. It is further submitted by the learned Counsel for the Petitioners that the comparable transactions in the same building and other comparable transactions proving thereby that there was no understatement of consideration, relied upon by the Petitioners were not considered at all. According to the learned Counsel for the Petitioners, the instances referred to in the notice issued by the Appropriate Authority were not comparable with the subject property, and hence the order of purchase is not valid. The learned Counsel for the Petitioners Mr.Bhujale has contended that the relevant material being the Valuation Report, Note of Deputy Commissioner of Income Tax and

material/information regarding transactions relied on by the Appropriate Authority were not furnished, at all to the Petitioners, though relied upon by the Respondents, hence the impugned order was clearly violative of the principles of natural justice.

9. It is further case of the Petitioners that the market value of the subject property was not determined and only an observation was being made that the apparent consideration was low. The learned Counsel for the Petitioners has submitted that it was not sufficient to prove understatement or that the difference was more than 15% and there was no valid basis for presumption of attempt to evade tax. Lastly, the learned Counsel for the Petitioners has submitted that the impugned order dated 18th February,1993 is invalid and void-ab-initio, as there was no positive finding that there was an attempt to evade tax, and accordingly, the impugned order is liable to be quashed and set aside.

10. Mr.Bhujale for the Petitioners pointed out the "pre-determined mind" and bias of the Respondents, is ex-facie clear from paragraph-3 of the annexure to the show cause notice dated 6th January,1993, which reads as under :

> . We are, therefore, satisfied that this is a fit case for exercising the pre-emptive right of purchase by the Central Government under Section 269UD(1) of Chapter XX.C of the

Income Tax Act,1961. An order under Section 269UD(1) is, therefore, passed accordingly.

11. In reply to the contentions of the Petitioners, the learned Counsel for the Respondents, Mr.Ashokan contended that all the procedural as well as material formalities, which were required to be carried out, were so carried out by the Appropriate Authority and thereafter, a speaking order was passed, wherein the Respondents have recorded reasons for passing such order. It is the case of the Respondents that while passing the impugned order adequate care was taken, after giving a reasonable opportunity of hearing. Even, the Respondents had personally visited to the site in question before passing the order under Section 269 UD of the Income Tax Act. The learned Counsel for the Respondents has submitted that the impugned order does not suffer from any legal infirmities and it is not based on any reasons either erroneous/irrational or irrelevant. However, Mr.Ashokan could not controvert paragraph-3 in the annexure to the show cause notice dated 6th January,1993. Mr.Ashokan could not also dispute that the relevant materials relied upon by the Respondents were never furnished to the Petitioners.

12. We have perused the judgment of this Court in the case of **Mrs.Nirmal Laxminarayan Grover Vs. Appropriate Authority (Income-Tax Department) and Others 223 ITR 572 (Nagpur Bench)**, wherein this Court

had dealt with the issue of purchase of immovable property by Central Government, notice Under Section 269 UD of the Income Tax Act etc. In the aforesaid judgment, this Court had categorically held that the order of Appropriate Authority had passed pursuant to such a defective Show Cause Notice was illegal and vitiated for not being in consonance with basic principles of natural justice. The Appropriate Authority had not proved by clear and cogent material that the land in question was significantly under valued and hence, the Court held that the order of compulsory purchase was liable to be quashed. The Court observed that it was necessary for the Appropriate Authority to refer to the details in the show cause notice so that the transferor and/or transferee would have real and proper opportunity to meet the case of the Department. The Court further observed that it was necessary to see that issuing a show cause notice is not merely an empty formality. The conclusions of the Authority at the stage of giving a show cause notice are always prima facie or tentative conclusions and if it is not so, its ultimate order would suffer from its bias i.e. pre-determined mind.

13. We are fully satisfied in the above case is clearly that of "pre-determined mind" as in the show-cause notice itself in the annexure, order under Section 269UD(1) of the Act has been passed. Over and

above, all the relevant materials relied upon by the Respondents, were never furnished to the Petitioners, though demanded by them, hence the impugned order is clearly violative of principles of natural justice.

14. The judgment in the aforesaid case is squarely applicable in the present case. Under these facts and circumstances of the case and in view of the above referred Judgment of this Court, the impugned order is liable to be quashed and set aside. Accordingly, the impugned order dated 18th February,1993 is quashed and set aside, and the Petition is allowed, and Rule is made absolute in terms of prayer clauses (a) and b(ii) with costs.

(V.C.DAGA,J.) **(DR.S.RADHAKRISHNAN,J.)**